

EXPERT OPINION IN NDPS* CASE " A STUDY

By

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1. The Indian Evidence Act, 1872 provides for opinion evidence by experts under Section 45 which states thus:

"When the Court has to form an opinion upon a point of foreign law, or of science or art or as to identify of hand-writing or finger impression, the opinion upon that of persons specially skilled in such foreign law, science or art or in questions as to identify of hand-writing or finger impression are relevant facts. Such persons are called experts".

2. The Supreme Court has ruled in *Mobarak Ali's* case,¹ that the witness must confine themselves to the facts and not to state their opinion, as forming of opinion on the basis of evidence given before the Court is a judicial function. This function cannot be delegated to the witnesses. In order to form an opinion in the exercise of judicial function, the Courts take the help of the experts who are specially skilled and possess adequate knowledge based on experience, devoted study and had special training in the field in which they function. However, the opinion of an expert can be contradicted. The law allows an expert being cross-examined by another expert². Further, the law provides that whenever the opinion of any living person is relevant, the grounds on which such opinions are based

are also relevant³. The Courts often rely on opinion of experts on matters of scientific nature, in order to arrive at proper conclusions or findings.

3. In order to determine the competency of an expert, the Courts take into consideration factors such as qualification, experience, training and study. In cases of conflict of opinion, that which supports direct evidence in the case, is accepted.

4. A Study in relation to the role of experts in NDPS cases, as gleaned from Court decisions, reveal the following:-

- (i) Defects and irregularities committed by the prosecution proved fatal in NDPS case;
- (ii) The report of analyst regarding weighing of opium at the Govt., opium factory is held admissible in evidence;⁴
- (iii) On the basis of tests conducted, the report of the chemical examiner with regard to percentage of Narcotic found together with the reasons given by the chemical examiner is admissible in evidence;⁵
- (iv) The report of the Forensic Science Laboratory alone can disclose whether the sample is opium or not;
- (v) When the FSL⁶ report does not relate to the sample seized from the accused, the report will not be considered;⁷
- (vi) In cases, where the FSL report was not proved by any independent witness, the report was held not

* NDPS refers to Narcotic Drugs and Psychotropic Substances Act, 1985, hereinafter referred to as NDPS Act.

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1. *Mobarak Ali v. State of Bombay*: AIR 1957 SC 857.

2. See Section 46 of the Indian Evidence Act which states, 'Facts, not otherwise relevant are relevant if they support or are inconsistent with the opinion or experts, where such opinions are relevant.

3. See Section 51 of the Indian Evidence Act.

4. *T.A. Krishnaswamy v. State of Madras*: AIR 1966 SC 1022.

5. *Supra* Note 3

6. FSL throughout this study refers to Forensic Science Laboratory

7. *Roop Singh v. State of Rajasthan*: (1996) ILR (Raj.) 87.

- admissible⁸. It is therefore, necessary that FSL report should be proved by independent witness/witnesses;
- (vii) The FSL report must specifically state that the 'drug' seized is covered by the NDPS Act. In other words, if the article seized is either exempted or not covered by the NDPS Act, the report cannot be acted upon⁹;
- (viii) If the FSL report is considered doubtful, Court cannot rely on the report¹⁰. In other words, the FSL report must be prepared carefully to give rise to its truthfulness and does not give rise to any doubts;
- (ix) There should be no tampering of seals of packets sent to FSL and the seals should remain intact, when they reach FSL and this should be sufficiently indicated in the FSL report¹¹;
- (x) In cases of investigation conducted by an authority without authorization from Central or State Government, and without jurisdiction, the Court held, that the FSL report cannot be acted upon and the trial is vitiated;¹²
- (xi) In the absence of evidence to show that the same article seized was sent to FSL, the FSL report was held inadmissible, particularly taking into account long delay in sending the seized article to FSL which was not explained¹³;
- (xii) Where sample markings were changed at FSL, the FSL report was not acted upon¹⁴. It was found that the samples remained not safe as they were tampered within SP's office;
- (xiii) Senior Scientific Assistant, who was not covered by Section 293 of Criminal Procedure Code, his report was held not proper, when there was no testimony of the maker of the report¹⁵;
- (xiv) It is necessary that FSL report should be marked at the stage of recording of evidence. In other words, it cannot be marked at the stage of final arguments. If it is not marked at the stage of recording of evidence, it cannot be acted upon, since it denies the opportunity to the accused to rebut the report¹⁶;
- (xv) Unless the report of FSL is supported by reasons, it cannot be acted upon. Further the chemical examiner must be examined in the Court¹⁷;
- (xvi) Smell is not a conclusive test, and therefore, the FSL report that from smell the article detected was opium, cannot be accepted by the Court¹⁸. It is therefore, mandatory for the FSL should thoroughly examine the drug and conduct the necessary tests as prescribed by the rules, to reach a finding that the substance is 'opium'; and
- (xvii) In cases, where the article seized is sent to the Magistrate with a request to send it for chemical examination, the report of FSL was not acted upon

8. *Mehmood v. State of M.P.*: (1190) 2 EFR 212.

9. *Sukoinder Kumar v. State of Punjab*: (1993) 2 EFR 151.

10. *Satpal v. State of Rajasthan*: (1996) 1 RCD 363.

11. *Meena Gopal's case*: (1993) Cr.L.J.P. 663; see also the case of *Telu Singh v. State of Rajasthan*: (1996) Cr.L.J.P. 105.

12. *Amar Chand v. State*: (1991) ILR 669 Rajasthan.

13. *Duggan Mui v. State of Gujarat*: (1996) 2 GCD 368.

14. *Bhala Singh v. State of Rajasthan*: (1996) ILR Raj. 487.

15. *Attar Singh v. State*: (1994) 30 DRJ 65 (Del.).

16. *Sattar Mohd. v. The State*: (1989) Cr.L.P. 45.

17. *Uma Kanth v. State of U.P.*: (1993) DCP 316 and also Section 51 of the Indian Evidence Act.

18. *Prem Shanker v. State of Punjab*: (1996) 1 EFR 579.

as there was no link evidence in the case¹⁹.

Several decisions of the Court in NDPS Cases reveal defects and irregularities either on the part of the investigating agency or on the part of FSL, which rendered the FSL report not to be acted upon or held inadmissible in evidence. It is therefore, necessary to deal with NDPS cases with abundant care and caution and handle them strictly in accordance with the prescribed procedures. It may be necessary to create sufficient number of FSL's in rural areas, where most of the crimes involving forensic science issues arise. It may also be desirable to allow private FSL's to be established, by making a law to this effect on the analogy of the law, which provides for registration of private health care establishments. This will provide suitable employment opportunities to the qualified post-graduate science degree holders (M.sc) with Forensic science specification. In the Zonal Police Stations, qualified M.sc Forensic Science post-graduate may be appointed to assist the police officer in dealing with Forensic Science issues. There is an emergent need to have a special subject in LLB Courses on Forensic Science, so that lawyers may be well-equipped with the principles of Forensic Science to handle criminal cases effectively.

IMPACT OF THEORIES OF PUNISHMENT ON SOCIETY

By

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The desire of becoming rich in short modern electronic media amenities unprincipled fray to capture inequalities, poverty, unemployment some of the reasons making people to committing antisocial activities. Citizens eagerly going through news papers watching tvs, browsing Internet to see columns to see the types of punishment imposed on culprits. But in many Cases Investigating Officers are not able to produce link evidence in criminal cases causing escape of culprit after trials in courts, which develop no fear in the mind of other habitual offenders in our society.

When we go through the Indian Penal Code in which Section 53 contemplates punishments. It runs as follows:

The punishments to which offenders are liable under the provisions of this code are

Firstly:- Death

Secondly:- Imprisonment for life

Thirdly:- [Repealed by Act 17 of 1949]

Fourthly:- Imprisonment, which is of two descriptions, namely:-

(1) Rigorous that is with hard labour

(2) Simple

Fifthly: Forfeiture of property

Sixthly: Fine

Among all these types of punishment imprisonment or fine or both are common. It is a cardinal principle of criminal law, that all documents have to be submitted at the time of filing final challan. It is the purport of Section 173 of Cr.P.C. But in many important sessions cases also the names of scientific

19. *Ganesh Nayak v. State of Orissa*: (1996) 2 CCR 126

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